EX PARTE OR LATE FILED

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Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, D.C. 20554

Re: **EX PARTE**
CS Docket No. 98-201

Dear Ms. Salas:

On January 7, 1999, Andy Wright (Vice President of Government and Legal Affairs, Satellite Broadcasting and Communications Association ("SBCA")), Jay Downen (National Rural Telecommunications Cooperative), Jack Richards (Keller & Heckman), James Barker (Latham & Watkins), Karen Watson (EchoStar Communications Corp.), Pantelis Michaelopolous (Steptoe & Johnson), Benjamin Dawson and David Pinion (Hatfield & Dawson), Sue Crandall (Morrison & Foerster), and the undersigned (collectively, the "SBCA Representatives") met with Commission staff members Donnie Fowler, Eloise Gore, Bill Johnson, and Debbie Klein of the Cable Services Bureau; Bob Eckert of the Office of Engineering and Technology; and Rosalee Chiara and Rockie Patterson of the International Bureau regarding the above-captioned proceeding.

The SBCA Representatives discussed the arguments presented in the comments and reply comments filed by SBCA and its member companies in the above-captioned proceeding, as well as the points set forth in the attachment hereto. The parties also discussed the use of a confidence factor in methodologies for predicting signal strength.

Two copies of this letter have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(2) of the Commission's rules.

Very truly yours,

Margaret L. Tobey

Margaret L. Tobey
Counsel for the Satellite Broadcasting and Communications Association

Attachment
cc: Donnie Fowler
Eloise Gore
Bill Johnson
Debbie Klein
Bob Eckert
Rosalee Chiara
Rockie Patterson

SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION

SATELLITE DELIVERY OF NETWORK SIGNALS
TO UNSERVED HOUSEHOLDS
CS DOCKET NO. 98-201

I. Consumer Impact

- Within months, as a result of recent injunctions by federal district courts, up to 2.2 million satellite subscribers across the country will lose access to distant network satellite service unless the FCC acts now to protect consumer interests. Many of these consumers are unable to receive an acceptable over-the-air local network signal and will be deprived of network service. Countless numbers of future subscribers could also be denied service. Such a result is contrary to the purpose of the SHVA, which, as Senator Leahy noted in his comments, was to allow reception of distant network signals by satellite viewers who cannot receive an acceptable over-the-air local signal.

II. Jurisdiction

- The case law supports SBCA's position that the Commission has the jurisdiction to revise the Grade B signal strength standard and that Congress did not "freeze" the current standard.

- The Copyright Office, in its reply comments, agrees. "In sum, we support the Commission's determination that it has the authority to define what constitutes a signal of Grade B intensity."

- Thus, the Affiliate Associations' statement in its reply comments that the Copyright Office "has tacitly acknowledged that the Commission has no existing authority to interpret the [SHVA]" is simply wrong.

- The NAB, which has contended that the Commission lacks jurisdiction in this matter, does not even address the case law contradicting its position in its reply comments.

- The NAB also seeks to forestall Commission action in this matter on the ground that agency action will interfere with ongoing court litigation. Importantly, this view is not shared by the federal district court in the Florida litigation, which noted in its Finding of Facts and Conclusions of Law entered December 22, 1998, that "the FCC initiated an expedited rulemaking proceeding on the way it defines, measures, and predicts the strength of television signals in light of the SHVA" and that "the Court reserves the right to issue a supplemental order after the FCC has resolved the rulemaking issues pending before it relative to this lawsuit."

III. Grade B Signal Strength

- The signal strength values proposed by SBCA -- 70.75 dBu for low-band VHF stations, 76.5 dBu for high-band VHF stations, and 92-75 dBu for UHF stations, are fully supportable because they fall within a range of figures obtained by using values that the Commission has determined are reasonable.

- The NAB's and Affiliate Associations' contention that the Grade B signal strength values should be lowered rather than raised is flawed because the broadcasters' proposed values are based on an idealized television installation that assumes incorrectly that consumers will always utilize the highest quality, most technologically advanced equipment. Thus, the broadcasters have cavalierly argued that consumers would be "served" if only they would invest in rooftop antennas, rotors, pre-amplifiers, RG-6 antenna cable, and 8-bay bow tie UHF antennas -- all for the reception of "free" over-the-air television. The Commission, however, did not base the current values assigned to the planning factors on such an idealized installation. To the contrary, the Commission historically has based its analyses on normal or typical installations, which is clearly the most appropriate perspective for policy-making that directly affects the average consumer.

- The range of figures used by Hatfield & Dawson for receiver noise is appropriate. The low-end figures (6, 7 and 12 dB) are those proposed by FCC engineer G. Kalagian in 1977. Although the NAB states that advances in technology support lower receiver noise figures, it cannot cite to any instance where the Commission has utilized such lower figures. Again, however, in determining what constitutes acceptable service to the average consumer, the Commission should not assume consumer use of the most advanced technology.

- The signal to noise ratio figures of 34 (or 36) dB (low-end) and 43 dB (high-end) used by Hatfield & Dawson are fully supportable. The 43 dB value is the lower boundary of a "fine" TASO picture and therefore the upper boundary of an "acceptable" TASO picture. Further, if the Commission has determined as a policy matter that cable viewers deserve a "fine" picture, it is illogical to relegate the viewers of over-the-air signals to a lesser quality picture.

- The low-end antenna gain numbers utilized by Hatfield & Dawson are those utilized by the FCC in its UHF comparability report. The high-end antenna gain numbers were determined by the NTIA. Both the FCC and the NTIA properly assumed use of all-band antennas (the most common consumer installation). The broadcasters' antenna gain figures, however, inappropriately assume that consumers use single-band or even single-channel antennas.

- Similarly, the broadcasters, in challenging Hatfield & Dawson's line loss figures, inappropriately assume that a consumer will utilize RG-6 antenna cable. In fact, RG-6 cable is atypical, rarely used, and would only be found in a "super-deluxe" installation.

IV. Predictive Methodology

- Adoption of a Commission-endorsed accurate predictive methodology provides the only realistic solution to the problem of identifying whether a household can receive a signal of Grade B signal strength. Satellite operators cannot be expected to test every one of the millions of potentially eligible households before actually providing service. The results of this predictive methodology should create a presumption as to whether a household is able to receive a signal of Grade B strength, rebuttable by actual measurement at the expense of the challenger.

- Contrary to the NAB's assertion, SBCA has not claimed that standard Longley-Rice is inaccurate. SBCA has said that standard Longley-Rice is not the most accurate or appropriate predictive methodology for the type of point-to-point determination of signal strength required by the SHVA because of flaws in the methodology specifically identified by SBCA and not disputed by NAB or the Affiliate Associations. SBCA noted that at individual household locations, propagation path impairments may result in input parameter variations that cannot properly be computed by Longley-Rice 1.2.2. In addition, Longley-Rice 1.2.2 fails to take into account important factors that affect signal propagation, such as land use and land clutter (urbanization and vegetation) and interference.

- Standard Longley-Rice includes sets of mathematical expressions that reproduce the variability curves for various climate-types defined by the ITU. However, contrary to the broadcasters' claims, the model *does not* include empirical data to account for local foliage, building clutter or other environmental factors specific to a given path study to a specific household location.

- The variation of the TIREM methodology proposed by SBCA would provide more accurate predictions because it would combine the more conservative prediction capabilities of TIREM with an overlay of data concerning vegetation and urban clutter.

V. Actual Measurement Method

- The Commission's method of measuring signal strength within an area of for propagation analysis is inappropriate for the SHVA, which requires measurement of signal intensity at an individual household.

- The Copyright Office, in its reply comments, notes that the lack of a practical testing method is a key factor in the Grade B controversy. "The ways and means of definitively determining whether an individual household receives a signal of Grade B intensity at the antenna are at the center of much consumer confusion and of the complaints leveled at Congress, the Copyright Office and the Commission."

- The current method is based on invalid assumptions, such as the assumption that an individual household's antenna will be oriented towards the station's broadcast tower.

As the Copyright Office correctly notes, "we do not believe that a multidirectional, rotating antenna that allows the antenna to be pointed directly at the transmitter site of the network broadcast station fits within the definition of a 'conventional outdoor rooftop receiving antenna.'"

- Although the Commission should adopt a realistic method for measuring actual signal strength at individual households, SBCA emphasizes that the actual testing method is nothing but a means of implementing the SHVA's eligibility standard. If that standard improperly results in consumers who are unable to receive clear over-the-air network signals being prohibited from receiving such signals via satellite, no actual testing method -- no matter how easy or inexpensive -- will matter.

VI. Local-Into-Local Is Not A Panacea

- Local-into-local is not a panacea because no DBS company has enough capacity to provide local signals in all television markets nationwide. Only one DBS provider (EchoStar) is planning to provide local signals via satellite, and even EchoStar plans only to offer signals to 50% of the population. The other 50% of the population, if unserved, will have to continue to rely on distant signals. Therefore, Commission resolution of this controversy in favor of these unserved consumers is essential.